(3)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR(CHH.G.)

APPEAL UNDER SEC. 374(2) CR.P.C.

Cri.Appeal No. 174 /2001.

APPELLANT (In Jail) — Parmeshram son of Chhabilal Dehari aged 33 years, R/o Block Colony Dantewada Distt.Dantewada (Bastar) Chhattisgarh.

VERSUS

RESPONDENT — State of Chhattisgarh Through: P.S.Dantewada Distt.Dantewada (Bastar)

CONVICTION	SENTENCE
U/s 302 I.P.C.	Imprisonment for life with fine of Rs.500/-. In default, R.I. for one year.

Arising out of Sessions Trial No.373/99 Dt.22.12.2000 passed by Second Addl.Sessions Judge, Jagdalpur (Bastar) presided in by Shri Yogesh Mathur.

(749) Filed on 14-2-2001 by Shri Manoj Mishra Advocate R. to AR

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(23)

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A.174 **सन्** 200/

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH:

HON'BLE MR. L.C.BHADOO
HON'BLE MR. DHIRENDRA MISHRA, JJ

CRIMINAL APPEAL NO. 174/2001

Appellant : **Parmeshram**

Versus

Respondent : **State of Chhattisgarh.**

Mr. N.S. Dhurandhar counsel for the appellant.
Mr.U.N.S. Deo Additional Public Prosecutor for the State.

ORAL JUDGMENT
(15.12.2006)

Per L.C. Bhadoo, J

The appellant has preferred this Criminal Appeal under section 374(2) of the Code of Criminal Procedure against the judgment of conviction and order of sentence dated 22.12.2000 passed by Additional Sessions Judge, Bastar at Jagdalpur in Sessions Trial No. 373/1999 whereby he has been held guilty under Section 302 of the Indian Penal

P.T.O.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक CRA.174/01 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Code for committing the murder of his son Sohan and sentenced him to undergo imprisonment for life and pay fine of Rs. 500/-, in default of payment of fine to further undergo R.I. one year.

2. Case of the prosecution in brief is that on 8.7.1999 PW-1 Garibaram Kulhara lodged the First Information Report Ex. P-1 in Police Station Dantewada to the effect that on that day at about 11 a.m. he received a telephonic information from the Divisional Accountant of Public Works Department that his relative Jamunabai wife of Dehari has come to his office. She has informed that health of her elder son is critical. Receiving this information he rushed to the office of Public Works Department where Jamunabai, his sister-in-law disclosed him that her husband had taken away her two sons saying that he would take them to his residence, just after that she came to know from some persons that her husband has committed the murder of her elder son Sohan by pressing his neck. Thereafter, he along with Vijay, Manish, Narayan and other employees of PWD went towards village Balood in search of the body, which was found in the forest in front of Adarsh School. Thereafter, search of accused Parmesh was made, he was also found behind the house of Sarpanch of village Balood. On inquiry about the reason for

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	murder of Sohan, the accused disclosed that as he was doubtingf the fidelity of his wife, that is why he committed the murder of Sohan by pressing his neck. On receiving this report, Station House Officer of Police Station, Dantewada registered Crime No. 45/99 for the offence punishable under Section 302 of the IPC, left for the scene of occurrence and prepared inquest report Ex. P-3 on the body of Sohan. While in police custody, accused gave memorandum Ex. P-4 regarding the place where he committed the murder of his son Sohan and in pursuance of that he took them to the place from where one cycle, one pair of Chappals and one piece of rope were lying and the same were taken into possession under Ex. P-5. Site plan Ex. P-9 was prepared and the body was sent to Primary Health Centre, Dantewada for post mortem examination where Dr. V.K. Tirki PW-7 conducted the post mortem examination, prepared the post mortem report Ex. P-15. He opined that cause of death was asphyxia due to throttling. Accused was also examined by Dr. Tirki for the injuries on his neck who noticed that there was an abrasion around the neck in the size of 2 x 1 c.m. and prepared the injury report Ex. P-16. After completion of investigation charge sheet was filed in the Court of Chief Judicial Magistrate, Dantewada who in turn committed the case to the	

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	Court of Sessions Judge, Jagdalpur from where learned Additional Sessions Judge, Jagdalpur received the same on transfer for trial. 3. Prosecution in order to establish the charge against the accused/appellant examined nine witnesses. Statement of the accused was also recorded under section 313 of the Code of Criminal Procedure in which he denied the material appearing against him in the prosecution evidence and stated that he is innocent and has been falsely implicated in the case. 4. Learned Additional Sessions Judge after hearing counsel for the respective parties convicted and sentenced the accused as mentioned above. 5. We have heard Mr. N.S. Dhurandhar on behalf of the accused/appellant and Shri U.N.S. Deo Additional Public Prosecutor on behalf of the respondent/State. 6. In this case there is no ocular or direct evidence connecting the accused/appellant in the crime in question. The case rests on the	

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

circumstantial evidence and the prosecution has tried to establish the charge against the accused on the basis of following circumstances:

(i) Accused made extra judicial confession before Garibaram PW-1 and Birbal Singh PW-2;

(ii) Accused himself attempted to commit suicide.

7. Learned counsel for the appellant has assailed the judgment of the trial court on the ground that in this case no independent witness has supported the case of the prosecution regarding extra judicial confession made by the accused before PW-1 Garibaram, who is the brother-in-law of the accused. He also submitted that this witness was already knowing about the death of Sohan, therefore, extra judicial confession cannot be relied upon. He submits that the extra judicial confession does not inspire confidence. He also submits that as far as witness Birbal Singh and other witnesses are concerned, they have turned hostile.

8. As per the settled principle of law in order to place reliance on the extra judicial confession the Court has to ascertain the following:

(i) that the extra judicial confession was voluntary, prompt and true;

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

(ii) the circumstances under which the crime was committed and the extra judicial confession was made;

(iii) confidence in the person before whom the extra judicial confession was made.

9. If we scrutinize the evidence of PW-1 Garibaram, on the relevant day he was working as Tehsildar, Dantewada and was the close relative of the accused being his brother-in-law. As per the evidence when Jamunabai wife of the accused came to know from the villagers that her husband Parmesh has committed the murder of her son Sohan, she immediately rushed to the office of Public Works Department where accused was working. She asked the accountant to inform PW-1 Garibaram about the incident on which PW-3 K.K. Mandlekar informed PW-1 Garibaram about the incident. Immediately after receiving this information, PW-1 Garibaram came to the office of PWD where, as per the evidence of PW-1, Jamunabai informed him that her husband Parmesh had taken her two sons towards village Balood and some persons have disclosed to her that he has committed murder of the elder son by pressing the neck. Thereafter, Garibaram PW-1 along with the employees of PWD left for the search of the accused towards village Balood and at a

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मामला क्रमांक Cr.A.1254/01 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

distance of 4 k.m. in the forest area in front of Adarsh School, body of Sohan was found lying there, one cycle and a pair of Chappals were also lying there, however, accused was not there. Thereafter, search of the accused was made and near the house of Sarpanch of village Balood, the accused was found. On inquiry as to how the incident occurred, he disclosed that he did not know what had happened to him that he committed murder of his son by pressing the neck. Thereafter he lodged the report of Ex. P-1 in the police Station.

10. If we scrutinize the evidence of this witness on the aforesaid principle, we find that the extra judicial confession was voluntary and prompt because there is nothing on record which shows that any pressure was exerted on the accused. As soon as accused met this witness, he immediately disclosed that he has committed the murder of his son by pressing neck. Being the brother-in-law the accused had the confidence in this witness and that is why he narrated the true facts before him. In the cross examination of this witness, the defence has not cross examained this witness on the aspect of extra judicial confession made before this witness. There is nothing in the cross examination to show that this witness had any grudge against the accused in any manner. The evidence

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

of this witness has been corroborated by the evidence of PW-2 Birbal Singh near whose house the accused was found roaming. Even though this witness in his examination in chief has not categorically stated that the accused made extra judicial confession, yet in the cross examination by the Additional Public Prosecutor he has categorically stated that on inquiry the accused disclosed that he has committed the murder of his son by pressing neck. The evidence of this witness cannot be totally discarded or washed out because this witness has been cross examined by the Additional Public Prosecutor and the same can be accepted to the extent that his version is found to be dependable on a careful scrutiny thereof as has been held by the Apex Court **in the matter of Radha Mohan Singh alias Lal Saheb and others Vs. State of U.P.** reported in **2006 AIR SCW 421.**

11. In the cross examination of this witness also the defence has not cross examined this witness on the point of extra judicial confession made before him by the accused, therefore, it cannot be said that no independent witness has supported the case of the prosecution to the effect that accused made extra judicial confession. Therefore, even though other witnesses have turned hostile but from the evidence of PW-

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मामला क्रमांक CGA-1741/01 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	1 Garibaram and PW-2 Birbal Singh it is established that the accused made extra judicial confession before them regarding commission of murder of Sohan by the accused by pressing neck. Thus we are convinced that the accused made extra judicial confession regarding commission of crime in question. 12. As far as the arguments raised by the counsel for the accused that PW-1 Garibaram was already knowing about the murder of Sohan and therefore, the question of making extra judicial confession before him by the accused cannot be relied upon is concerned, this argument of the counsel also is devoid of merit for the reason that PW-3 K.K. Mandlekar, the accountant to whom the wife of the accused approached and who made telephonic call to Garibaram PW-1 to the effect that whatever the wife of Parmesh disclosed to him, he informed Garibaram that the wife of the accused came weeping and said that her husband had taken her two sons for committing murder, therefore, in advance he was not knowing that in fact the murder was already committed. As per the evidence of PW-1 Garibaram on coming to know about this fact he along with the employees of PWD left in search of accused towards Balood and in front of Adarsh School in the forest the body of Sohan was found lying there.	

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	Thereafter, they again made the search of the accused who was found roaming near the house of Birbal Singh PW-2 the Sarpanch of village Balood. There, on inquiry the accused made extra judicial confession. Extra judicial confession made before PW-1 Garibaram is also corroborated from the medical evidence of Dr. V.K. Tirki who conducted the post mortem examination on the body of Sohan and stated that on 8.7.1999 he was working in the Primary Health Centre, Dantewada and he conducted the post mortem examination on the body of Sohan. There was blood in the nose of the deceased, five abrasions were there around the neck each in the size of 3 x 1 c.m. and the neck of the deceased had turned towards the left and bone below the head was found broken and injuries were ante mortem in nature and the death was homicidal. 13. If we look into this medical evidence it is found that the accused made extra judicial confession before PW-1 Garibaram to the effect that he committed murder of his son Sohan by pressing his neck and the injuries were found on the neck, therefore, extra judicial confession is corroborated by the medical evidence.	

मामला क्रमांक CRA/1741/01 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

14. Dr. V.K. Tirki PW-7 has stated in his evidence that on 8.7.1999 he examined the accused and noticed that there was an abrasion on his neck. Accused himself after committing the murder of his son made an attempt to commit suicide as per the prosecution case and the same has been corroborated by the medical evidence of PW-7 Dr. V.K. Tirki.

15. Thus for the foregoing reasons we are of the considered opinion that the prosecution has been able to establish through the medical evidence that the accused was the author of the crime in question and there was no possibility of any third person coming in between.

16. In the result, the appeal being devoid of merit is liable to be dismissed. It is accordingly dismissed.

Sd/-
L.C.BHADOO
Judge

Sd/-
DHIRENDRA MISHRA
Judge

P.T.O.